

IN THE UNITED STATES BANKRUTPCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re:	:	Case No. 17-23561-GLT
	:	Chapter 13
DAVID LEE JONES,	:	
	:	
<i>Debtor.</i>	:	
	:	
DAVID LEE JONES,	:	Related to Dkt. No. 80
	:	
<i>Movant,</i>	:	
	:	
V.	:	
	:	
U.S. BANK TRUST NATIONAL ASSOCIATION AS TRUSTEE OF THE CABANA SERIES III TRUST, BSI FINANCIAL SERVICES, and RONDA J. WINNECOUR, CHAPTER 13 TRUSTEE,	:	Hearing: July 3, 2019 at 10:30 a.m.
	:	
<i>Respondents.</i>	:	
	:	

FILED

JUN 19 2019

CLERK, U.S. BANKRUPTCY COURT
WEST DIST. OF PENNSYLVANIA

**ORDER DENYING ENTRY INTO THE
LOSS MITIGATION PROGRAM NUNC PRO TUNC**

The matter presently before the Court is the *Motion to Enter the Loss Mitigation Program Nunc Pro Tunc* (“LMP Motion”) [Dkt. No. 80] filed by Debtor on May 22, 2019. The deadline to respond to the *LMP Motion* was set for June 10, 2019, and as of this date no response has been filed. The matter is therefore ripe for disposition.

Respondent is the holder of a mortgage on Debtor’s residence. The previous mortgage holder was Citibank, N.A., which transferred the mortgage to U.S. Bank National Association on December 3, 2018 [Dkt. No. 61], which then transferred it to Respondent on January 31, 2019 [Dkt. No. 66]. Debtor previously sought and was granted entry into the Loss Mitigation Program by Order of the Court dated October 13, 2017 [Dkt. No. 20]. Approximately

one year later, Debtor filed his *Loss Mitigation Final Report* [Dkt. No. 56], which indicated that Debtor's attempts at obtaining a loan modification were unsuccessful. Citibank, N.A. listed the reason for the denial as Debtor's negative income, even after adjusting for a proposed modification.

The *LMP Motion* states that, in light of this transfer of mortgage holder, Debtor has established sufficiently changed circumstances to justify nunc pro tunc approval of his entry into the loss mitigation program. Federal Rule of Bankruptcy Procedure 9024 and Federal Rule of Civil Procedure 60(b)(6) provide that a Court may grant relief from a final judgment for "any . . . reason that justifies relief." Sufficiently changed circumstances is one such reason.¹ Unfortunately, according to the *Status Report* [Dkt. No. 76] filed by Debtor on May 9, 2019, his income situation is substantially unchanged since the time of his first modification denial. The Court must find that the changed circumstances necessary for granting such relief are thus regrettably absent here. Any further attempt at modification would be futile so long as the issue of lack of income has not been addressed.

Based upon the foregoing, it is hereby **ORDERED, ADJUDGED, and DECREED**, that:

1. The *LMP Motion* [Dkt. No. 80] is **DENIED**.

Dated: June 19, 2019



GREGORY L. TADDONIO
UNITED STATES BANKRUTPCY JUDGE

Case administrator to mail to:

Debtor
David A. Colecchia, Esq.
Ronda J. Winnecour, Esq.
Office of the U.S. Trustee

¹ See Mayberry v. Maroney, 529 F.2d 332 (3d Cir. 1978).

Certificate of Notice Page 3 of 3
United States Bankruptcy Court
Western District of Pennsylvania

In re:
 David Lee Jones
 Debtor

Case No. 17-23561-GLT
 Chapter 13

CERTIFICATE OF NOTICE

District/off: 0315-2

User: bsil
 Form ID: pdf900

Page 1 of 1
 Total Noticed: 1

Date Rcvd: Jun 19, 2019

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Jun 21, 2019.

db +David Lee Jones, 43 Marilou Drive, Jeannette, PA 15644-1077

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
 NONE.

TOTAL: 0

***** BYPASSED RECIPIENTS *****

NONE.

TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
 USPS regulations require that automation-compatible mail display the correct ZIP.

Transmission times for electronic delivery are Eastern Time zone.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Jun 21, 2019

Signature: /s/Joseph Speetjens

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on June 19, 2019 at the address(es) listed below:

David A. Colecchia on behalf of Debtor David Lee Jones colecchia542@comcast.net,
 dcolecchia@my-lawyers.us; jmonroe@my-lawyers.us; sshipley@my-lawyers.us; rjuliano@my-lawyers.us; ekudlock@my-lawyers.us
 James Warmbrodt on behalf of Creditor U.S. Bank National Association bkgroup@kmllawgroup.com
 James Warmbrodt on behalf of Creditor JPMORGAN CHASE BANK, N.A. bkgroup@kmllawgroup.com
 James Warmbrodt on behalf of Creditor Nationstar Mortgage as servicer for U.S. Bank National Association, not in its individual capacity but solely as Trustee NRZ PASS-THROUGH TRUST X bkgroup@kmllawgroup.com
 Karina Velter on behalf of Creditor U.S. Bank National Association amps@manleydeas.com
 Kevin M Buttery on behalf of Creditor Citibank N.A. kbuttery@rascrane.com
 Kevin Scott Frankel on behalf of Creditor Nationstar Mortgage LLC d/b/a Mr. Cooper, et al pabk@logs.com
 Kristen D. Little on behalf of Creditor Nationstar Mortgage LLC d/b/a Mr. Cooper, et al pabk@logs.com
 Leslie J. Rase, Esq. on behalf of Creditor Nationstar Mortgage LLC d/b/a Mr. Cooper, et al lrase@sterneisenberg.com, ddelvecchio@sterneisenberg.com; dbogucki@sterneisenberg.com
 Office of the United States Trustee ustpregion03.pi.ecf@usdoj.gov
 Ronda J. Winnecour cmecf@chapter13trusteeewdpa.com
 S. James Wallace on behalf of Creditor Peoples Natural Gas Company LLC sjw@sjwpgh.com,
 Equitablebankruptcy@peoples-gas.com; srk@sjwpgh.com

TOTAL: 12